**Heather Kibbey—NPDES comments 7-13-05**

***Pollution generator list/progressive enforcement***

These requirements are much too prescriptive. They do not recognize the extensive amount of work on this topic that most permittees have done already. We can get a new list of businesses in Pierce County from the Department of Revenue (a hassle, but it can be done), but some of the SIC codes included in the proposed list are absurd. Why would we need to inspect hospitals? They already have tight procedures and inspections for infectious wastes (something we are not qualified to evaluate). Railways are also listed—are we supposed to inspect all areas along tracks, just where outfalls controlled by the railway are, or just the rail yards (where they do not grant access due to the danger of moving trains). I think an approach where we propose enhancements to our programs would be better. Also, each jurisdiction has civil code which dictates how we do enforcement, so making this prescriptive may violate a number of ordinances we already have in place, and which cannot be changed just for the stormwater program because they apply to all departments in the county.

***Inspections of direct discharges***

Ecology recognizes that the jurisdictions are not responsible for direct discharges to waterbodies that are not part of the MS4—that this is Ecology's responsibility. In the current permit term, we have inspected those properties discharging directly. These inspections have been done in the spirit of cooperation between Ecology and Pierce County, as have our responses to requests to investigate complaints Ecology receives from Pierce County citizens. We intend to continue to act in a cooperative fashion, provided Ecology takes the same view toward cooperation in other areas of the permit, and does not try to transfer items that are clearly Ecology responsibility onto the permittees via the permit. In other words, are there not ways to cooperate that do not involve mandates in the permit?

***Contributor vs. Significant Contributor (Phase I vs. Phase II)***

There are no definitions for either of these terms in the Glossary at the back of either permit draft, so we must surmise that the meanings are consistent with past Ecology interpretations of the terms. For Significant Contributor(an EPA term), this has meant, in the non-point world, an entity that is discharging pollutants in a quantity sufficient that Ecology may place them under an NPDES permit, even if one is not required for them. Contributor constitutes a much broader category, and could mean just about everyone.

***Coordination with other jurisdictions—What does compliance mean--is general good?***

We will continue to meet with the other Phase 1 permittees. We will continue to participate in watershed committees where other Phase 1 and Phase 2 permittees and Tribes are present and involved (if they so choose). We will continue to produce and refine basin plans where the above named entities are

free to participate and comment. We will work with all other named entities where TMDLs are in place. We work with other entities to plan and implement salmon recovery. Is this enough to fulfill this requirement? If not, what else is needed?

***Implementation enforcement is decentralized to regions, not consistent***

All of the Phase 1 jurisdictions are aware that it is better to be in certain Ecology regions than it is to be in others. This is a reflection of a difference in philosophies, interpretation of regulations, and personalities of Ecology personnel. This can result in vastly different abilities of neighboring jurisdictions to take actions that can benefit the environment (the ultimate goal of these permits). This has been known for years in the wastewater permit universe, and has extended to the stormwater universe. For instance, take PAM usage for sediment flocculation on construction sites. This was allowed in the NW region, while at the same time, not allowed in the SW region. Some entities are actually split between 2 or more regions (Pierce County and DOT, for example), which compounds the problem of serving many different masters. A solution to this problem would be to separate the larger Phase II group out among the regions, and to retain oversight for the Phase 1 entities at Headquarters. If Ecology is truly making reporting requirements easier for themselves with respect to the Phase Is, this should work to both our advantages, assuring consistency and good communications with the biggest entities.

***Need personnel at Ecology with appropriate expertise in sufficient numbers***

It has been obvious for years that Ecology is understaffed to do a proper job on NPDES issues. This is just one of the reasons for Ecology not wanting to review SWMPs any longer, for making this permit more prescriptive, and for trying to come up with a reporting format that is simpler. We would argue that these measures do not necessarily lead for better water quality, and that having a fully staffed program centered in Headquarters will lead to better consistency and service, thus having a better potential for environmental improvement. Making onerous requirements on permittees, or shifting responsibilities from Ecology onto the permittees is not the best way to get things accomplished.

***Vesting***

Although the “V” word is no longer present in this permit, the intent of S5.C and D comes through loud and clear. Ecology is clearly putting us in the middle of a conflict that is not our doing, and that will require resolution between the state courts, Ecology, and the Federal government. A number of court cases have established vesting rights. A Washington State Supreme Court ruling in Noble Manor v. Pierce County, 133 Wn. 2d 269,943 P.2d 1378 (1997) clearly established that vested rights are established at time of application. The court held that

> "it is not only the right to divide land which vests at the time of a short subdivision application , but also the right to develop or use property under the laws as they exist at the time of application…..an applicant should have the right to have the uses disclosed in their application considered by the county or local government under the laws in existence at the time of the application."

This decision was reaffirmed at the local level in the case and appeals of Westside Business Park v. Pierce County. These decisions seem to run contrary to arguments of Federal preeminence (but which also has provisions regarding retroactive legislation). We would ask Ecology to get a proper Attorney General's opinion on this important matter, since it is truly an issue regarding laws and decisions which Pierce County did not originate.

***Items to be in place as of permit adoption date***

There are several of these sprinkled throughout the permit. That means we are essentially being directed to work on something now, under our extended 1995 permit. This would require a permit modification now, under compelling circumstances (usually requested by the Permittee). All references to items due as of the date of the permit need to have reasonable time frames established to have them due after issuance of the permit.

**NPDES Permit --Bill Leif**

**S2 – Authorized discharges**

**S2A3 - Stormwater discharges to ground waters of the state are covered under this permit, except that stormwater discharges to ground waters of the state that discharge through facilities regulated under the Underground Injection Control (UIC) program, Chapter 173-218 WAC, are not covered under this permit. The discharges are not regulated under the NPDES permit.**

**S2A4 - Stormwater discharges to ground waters not in hydraulic continuity with surface water are covered in this permit only under state authorities, Chapter 90.48 RCW, the Water Pollution Control Act. Again, the discharges, not just the UIC wells.**

**Questions**

**The statements above imply that the permit does not apply to anything pertaining to the discharge – source control BMPs, conveyance system maintenance, illicit discharge investigation, outfall screening. Is this what was meant? Doesn't seem probable, or wise.**

S7C2 – Data management

**a. mapping outfalls and receiving waters.** **Ecology should recognize that our MS4 outfalls are often not where the stormwater conveyance system discharges to the receiving water. We often do not have legal access to these outfalls if they are on private property.**

**b. mapping conveyance systems** **The 'conveyance' section places an artificial priority on mapping rural open-ditch systems over suburban pipe systems due to using the criterion of size. Ditches are the at least the size (and shape) of a backhoe bucket, which is greater than the 3.14 square foot x-sectional area of a 24" pipe.**

**What is meant by 'map associated drainage areas?' Simply the delineation of the contributing area?**

**c. mapping UIC well contribution areas.** **If UIC wells aren't covered by this permit, is this relevant?**

**f. database records** **Need more specificity re what information is required**

S2C7 – Source control program

**a.iii Referral to Ecology of sites with NPDES industrial permits. This section is bunk. Ecology can probably get away with saying that simple referral of such sites to Ecology doesn't constitute an adequate municipal source control program.**

S2C8 – Illicit Discharge Program

**b.ii training for spills etc.** **This section implies that municipalities must have staff who are directly responsible for emergency spill response. This shouldn't be required. There should be coverage by some emergency response agency in every part of the municipality, but in some cases it will be done through interlocal agreement or other regional emergency management agency.**

Monitoring

**You've heard my little rant already, and probably don't want to hear it again.**

2005 Stormwater Manual issues (now that it will be a permit condition)

**Procedural / administrative issues**

**Needs further review. My general sense is that they have a lot of stuff in the Manual that is administrative and we will want to weed it out, probably by more statements in the permit about exactly which parts of the Manual are required.**

**One issue is how much latitude local governments will have in making staff-level changes to BMPs as set forth in the 2005 Manual, or any manual. We want to have a fair amount of latitude in allowing things like alternate seed mixes and things like that, but Ecology currently doesn;t seem to agree at the permit manager level. We need to raise this to a high level. We thought we had it worked out, but there seem to have been some subtle paradigm shifts at the Ecology permit manager staff level.**

**Technical issues**

**Suite of enhanced treatment BMPs**
**a. Separation between infiltration systems and groundwater. Provided that the system won't ever become flooded, why can't we just design good treatment and do away with relying on the treatment capacity of native soils?**
**b. Enhanced treatment – some combinations of systems are bogus and should be removed.**

**There are other things I'm sure.**

*** * * * ***

<u>Review of proposed UIC rule as it relates to the NPDES permit</u>

**173-218-060 – wells must be registered and either rule-authorized or receive a state waste discharge permit.**

**Rule authorization requires meeting the non-endangerement standard in 080 or 090.**

**080 non-endg for all wells requires**
**prevent discharges that will cause a violation of 173-200 stds**
**comply with 90.48 (mainly says don't cause pollution)**
**comply with WAC 173-200, including application of AKART**

**090 for specific wells**

**new wells**

**vertical separation (Eastern W Manual? w WA manual?)**

**presumptive app to non-endg (using stormwater BMPs in an approved Manual OR**

**demonstrative (this v. sim to industrial permit)**

**existing wells**

**register them within X years**

**assess them within Y years (consider aquifer vulnerability and land use, consider BMPs used, id wells that are a 'high' threat to groundwater, develop retrofit schedule)**

**Questions**

**NPDES permit does not regulate discharges to wells regulated under UIC rule. This seems to imply that the permit does not apply to anything pertaining to the discharge – source control BMPs, conveyance system maintenance.**
**If rule authorization is denied, UIC well owner must obtain State Waste Discharge Permit. Seems like they mean a different SWD permit than the combo NPDES / SWD permit.**

**What is process for assessing proposals under demonstrative approach. A big deal will be the aquifer / system separation.**

**How will urban 'LID' systems in Puget Sound be allowed under this? This would seem to preclude.**

**Mention of E WA Manual. seems like for us it should be the W WA Manual.**

**General Permit Financial Tracking and Reporting**

**Rod Swanson – Clark County Public Works Department**

**This is a brief summary of financial reporting requirements found in the CWA and the draft permit, followed by a summary of my own observations from drafting the county's SWMP and six annual reports. Overall, I'd say that it's about impossible to accurately report budgets and it's probably impracticable to report expenses for all components or programs.**
Comparison of the draft permit to the CWA
**Maybe a good place to start is a comparison of the draft permit requirements to the Clean Water Act requirements.**

**The CWA has specific language requiring reporting of fiscal analysis (SWMP), annual expenditures (annual report), and projected budgets (annual report). It does not appear to specify the degree of detail for the fiscal analysis and reporting.**

**The draft permit has no requirement for budget reporting but requires tracking and reporting of expenditures by permit component.**

## Draft permit:

***S7.A.2. Each permittee shall track the cost of development and implementation of the SWMP required by this section. This information shall be included in the annual report***

***S9.B.3. Expenditures for the reporting period, with a breakdown for the components of the stormwater management program***

## Clean Water Act:

***Under the SWMP description:***
***122.26(d)(2)(vi) Fiscal Analysis. For each fiscal year to be covered by the permit, a fiscal analysis of the necessary capital and operation and maintenance expenditures necessary to accomplish the activities of the programs under paragraphs (d)(2) (iii) and (iv)… Such analysis shall include a description of the source of funds that are proposed to meet the necessary expenditures, including legal restriction on the use of such funds.***

***Under the annual report requirements,122.42(c)(5), it shall include: Annual expenditures and budget for the year following each annual report.***

**Does the CWA requirement for fiscal analysis in the SWMP need to be part of the current permit?**

**The annual report requires "annual expenditures" but doesn't appear to specify the level of detail within the program. It does include reporting the budget for the following year, but there are no specifics requiring component level detail.**

Problems for defining budgets

**Reporting planned budget by permit component using formal government budgeting documents is probably impossible. The following list has some of the reasons:**

- **Some revenue sources, such as development fees cannot be predicted with accuracy.**
- **Budget periods may not coincide with permit reporting periods. For example Clark County has a two year budget cycle, not a one year.**

- **Generally, budget categories are not specified to the detail of permit component; they can include more than one component.**
- **Budget categories may include both stormwater and non-stormwater activities. This is particularly true for programs in place before the SWMP. For example, the budget for implementing building and development regulations does not separate stormwater and non-stormwater permitting processes. The Solid Waste program includes pesticide use reduction along with other actions totally unrelated to stormwater pollution reduction.**

Problems for reporting expenses by permit component

**Detailed expense tracking is more feasible than reporting budgets. Tracking all SWMP related expenditures by permit component is probably possible but may not be practicable for some permittees or permit components.**

**To have accurate component level reporting, every government program has to establish and use expense tracking codes for all stormwater permit required activities. The accuracy of any expense tracking system is tied to the ability of workers to bill their time, materials, and professional services to the correct expense code. This can be a problem when stormwater actions are not readily separated from other work tasks.**

**At Clark County, it is practical to assign expense tracking codes, for reporting expenses to permit component, to Public Works' activities added after issuance of the permit. Good examples are monitoring and stormwater capital improvement projects where there is a clear link to the stormwater fees and the SWMP.**

**It is most difficult to track component or even stormwater permit related expenses in programs that were in place before the permit. This is especially true if the program has expense reporting priorities that override NPDES permit reporting. Plan review and inspection for development projects is a good example; worker hours are tracked for each new development project to better understand work flow. It is also considered impractical to track time separately for applying stormwater code requirements. In Clark County, one plan reviewer or inspector is assigned to address all code requirements for each project.**

**Q:\NPDES Permit Compliance\11159 2002 West Wa Phase 1 Permit\Financial Tracking and Reporting analysis.doc**

Big Picture Issues for Meeting of Phase I Jurisdictions with Ecology – July 2005
Preliminary Draft Permit (May 16, 2005) – Phase I Municipal Stormwater NPDES
Theresa and Verna

S5: Compliance with Standards

**1. Water-quality-based requirements vs. technology-based requirements.**

**2. Entire municipal separate storm sewer system = existing discharge. Revise or delete draft permit terms and associated definitions, including:**

- ***existing stormwater discharge***
- ***new stormwater discharge*** **(includes *new stormwater outfall* & *new stormwater source*)**
- ***new stormwater outfall***
- ***new stormwater source***

S2: Authorized discharges

**1. Entire municipal separate storm sewer system = existing discharge. (See above.)**

**2. Clarify point of responsibility where parts of municipal separate storm sewers are owned or operated by more than one entity.**



**July 5, 2005**
**Christy Strand**

Comments on differences in thresholds between the Phase I and Phase II draft permits

**The Phase I permittees are required to comply with the thresholds in Ecology's manual for new and redevelopment projects which are 5,000 and 10,000 square foot thresholds. The Phase II draft permit sets a minimum threshold of 1 acre per the federal legislation. The larger threshold may have been set to recognize the difference in level of resources between larger and smaller jurisdictions.**

**My rationale for why this is a bad idea follows:**

**The development requirements included in the NPDES permits need to be the same for both the Phase I and Phase II communities, particularly for those that are located within the same watershed. Having the same requirements would definitely increase the effectiveness of stormwater management within a watershed. If Phase I permittees are required to meet more stringent requirements than the Phase II permittees, it doesn't promote environmental and economic equity between neighboring communities.**

**One of the major goals of many communities is continued economic development. The management of stormwater quality and quantity is a significant cost to new development and redevelopment projects. If the stormwater requirements for the Phase II communities are less than those of the Phase I communities, developers may choose to develop in Phase II communities, where the cost of doing business is cheaper than in the Phase I communities.**

Big Picture Issues for Meeting of Phase I Jurisdictions with Ecology - July 2005
Preliminary Draft Permit (May 16, 2005) - Phase I Municipal Stormwater NPDES

**S7 Stormwater Program / Operation and Maintenance Program:** Overly Perscriptive and Huge Workload of Field Inspections, Deadlines, Maintenace Standards, and Enforement

a. Unrealistic deadlines (over 14 specific deadlines are proposed in a 5 year period)

b. "Facility-specific" maintenance standards unattainable for wide range of facilities

c. 6-month duration for local ordinance adoption unrealistic; probably unnecessary

d.100% facilities inspections unattainable, unrealistic, unnecessary and is far in away greater frequency than Ecology conducts for process wastewater facilities

e. Maintenance action response times and cost threshold are arbitrary

f. "Spot checks" of facilities following storms, 100% facilities inspections annually, catch basin inspections, and illicit discharger discovery, pollutant generator screening, and progressive enforcement requirements (from other sections) all add to huge amount of field staff hours - huge financial and workload

g. "Policies and procedures" for reduction of pesticide/fertilzer/herbicide use on public property back door to more stringent regulation than FIFRA